



**City of
Santa Clara**
The Center of What's Possible

Community Development
Memorandum

Date: October 26, 2017

To: City Manager

From: Director of Community Development

Subject: 2017 Housing Bills and Proposed Affordable Housing Impact Fee and Inclusionary Requirement Ordinance

Background

The provision of housing within Santa Clara for people of all income levels is an important goal for the City, as stated in the City's General Plan.

General Plan Goal 5.3.2-G1:

Equitable housing opportunities within the community for persons of all economic levels, regardless of religion, gender, sexual orientation, marital status, national origin, ancestry, familial status, race, color, age, source of income or mental or physical disability

General Plan Goal:

5.3.2-G2 A variety of housing types, sizes, location and tenure in order to maintain social and economic diversity in the City.

The City is also obligated under State law to plan for housing at all income levels and to provide annual reports to the State regarding the City's housing production by affordability level. Affordability level is divided into four classifications of housing costs affordable to people of different income levels defined as a percentage of the Area Median Income (AMI). The City is assigned a target number of housing units for an eight year period. The City has completed two years of its current eight year cycle (2015-2022), and produced housing by affordability category as summarized in the following table.

Affordability Level	Target Production 2015-2023	Actual Production 2015-2016
Extremely Low	525	0
Very Low	525	0
Low	694	1
Moderate (80% - 120% AMI)	719	36
Market Rate	951	642

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Historically the City has delivered affordable housing through two primary tools, the imposition of requirements on new residential development to set aside a percentage of the project as affordable housing, and the use of City funds (primarily Redevelopment Area tax increment revenue and the City's US Housing and Urban Development grants) to partner with affordable housing developers to produce affordable projects in Santa Clara. Both of these tools were significantly reduced in recent years through a court ruling (e.g.; "The Palmer decision") which prevent cities from imposing affordability requirements on rental apartment projects and through the City's abolishment of Redevelopment agencies. The City has continued to impose a requirement that 10% of the units in new for-sale development be designated as affordable units, typically in the moderate 120% AMI category.

Housing at all levels of affordability, and particularly for units within the designated levels, remains a critical need within the community as job growth continues and housing becomes increasingly unaffordable to a majority of the local population. To reinvigorate the City's ability to produce affordable housing, the City helped to fund a multi-jurisdictional collaborative effort to produce an Affordable Housing Nexus Study, prepared by Keyser Marston Associates. The Nexus Study provided the City with the legal ability to enact an Affordable Housing Impact Fee which can be imposed upon new residential and non-residential development. Revenue collected through this fee would be used to fund new affordable housing projects.

On September 29, 2017, Governor Jerry Brown signed legislation approving a number of Senate/Assembly bills brought forward by the State legislature to address the State's housing affordability crisis. At the October 10, 2016 City Council meeting, the Council directed staff to conduct an analysis of these bills and their implications for the City's proposed Impact Fee and return to the City Council once that analysis is complete.

A summary of the new bills and possible effects on the City's housing programs is included as part of this report.

2017 Housing Bills

While the bills overlap in various ways, they can be organized into the following categories:

- AB1505 enables the City to impose an inclusionary requirement on rental units.
- SB2, SB3 and AB571 create new funding sources to support affordable, farmworker (and market rate TOD) housing
- SB35, SB167, SB540, AB678, and AB1515 streamline approvals for new housing and limit a local jurisdictions ability to regulate/deny new housing development
- AB72, AB73, SB166, AB879 and AB1397 place additional requirements upon local jurisdictions to plan for new housing.
- AB1521 requires owners of assisted housing to accept qualified purchase offers.

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Of the new bills signed into law and reviewed as part of this effort, only AB1505 directly affects the City's proposed ordinance and ability to impose inclusionary requirements on new housing, while the bills would either streamline or fund new housing production in various ways.

AB1505

AB1505 allows for two key elements that were not in place at the time of the City's proposed Ordinance:

- Allows jurisdictions to enact inclusionary requirements for affordable housing (including rental) within new residential development (e.g. reverses Palmer).
- Allows State HCD upon review to limit inclusionary requirements to no more than 15% of units affordable at 80% AMI.

As a result of AB1505, cities can once again adopt inclusionary requirements for rental development with a strong legal basis and are not bound by nexus constraints when doing so.

Next Steps

As staff moves forward with a policy recommendation for Council consideration there are a number of factors that it will need to be considered including:

- What approach maximizes the number of affordable housing units in the City.
- Providing the City the discretion to determine when units should be included as part of a project.
- Ensuring that affordable units are mixed, and not separate, from market rate units.
- Providing units at all levels of affordability.

Staff will identify a near-term date for future Council consideration and will include it as part of the pending agenda items list.

Summaries of the 2017 Housing Bills

AB 1505 (Bloom/Bradford/Chiu/Gloria) authorizes cities and counties to adopt an inclusionary ordinance for residential rental units in order to create affordable housing. The bill declared the legislative intent in adding subdivision (g) to Section 65850 of the Government Code to supersede the holding and dicta in the court decision of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 to the extent that the decision conflicts with a local jurisdiction's authority to impose inclusionary housing ordinances pursuant to subdivision (g) of Section 65850 of the Government Code. Subdivision (g) authorizes cities and counties to Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code. The ordinance shall provide alternative means of compliance that may include, but are not limited to, in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units.

- Allows jurisdictions to enact inclusionary requirements for affordable housing within new residential development (e.g. reverses Palmer).
- Allows State HCD upon review to limit inclusionary requirements to no more than 15% of units affordable at 80% AMI. Such a limitation could be imposed if the requirement is found to be an impediment to housing production (defined as providing less than 75% of the RHNA allocation for above moderate income households unless otherwise demonstrated not to be an impediment by an economic feasibility study), or the jurisdiction has failed to submit an annual HCD report for two years.

SB 2 (Atkins), the Building Homes and Jobs Act, establishes a permanent funding source for affordable housing through a \$75 fee on real estate transaction documents. The fee is capped at \$225 per transaction and exempts real estate sales. The fees would generate roughly \$250 million a year, which would be split among state and local housing programs.

SB2 creates a permanent source of funding for affordable housing. Initially (in 2018) 50% would be dedicated to local jurisdictions, increasing to 70% in the second year and following. Allocated funds must be expended within 5 years. 2018 funds may be used by local jurisdictions to fund planning activities that streamline housing production. In 2019 and subsequent funds will be awarded through a competitive grant program based on the process/formulas set forth in US Code Section 5306 of Title 42 and with priority for low income/rural areas and for the provision of transitional housing and homelessness prevention.

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The City's Focus Area plans and zoning code update would potentially qualify for the funds available in 2018. The Bill should generate significant long term revenue, and while Santa Clara would be less competitive than more rural/low income jurisdictions, should still be able to submit qualifying grant applications in 2019 or later years. The City's Planning program could benefit in 2018 and the City's Housing program could benefit in the later years. Preparation of the Housing Impact Fee and Inclusionary ordinance would not directly benefit, but the potential availability of additional funding sources for affordable housing may be a consideration in the City's decision making process.

SB 3 (Beall) authorizes \$4 billion in general obligation bonds for affordable housing programs and a veteran's home ownership program. SB 3 must be approved by voters next November.

If approved by voters, the following would be made available:

- \$1.5 billion to fund the production of affordable multi-family housing through the State Housing Rehabilitation Fund;
- \$150 million to support transit oriented development (TOD) including technical assistance, loans and grants through the State Transit Oriented Development Implementation Fund;
- \$300 million for infrastructure (parks, water, sewer, and transportation) to support infill development;
- \$300 million for housing for agricultural workers;
- \$300 million for mortgage assistance;
- \$300 million for local housing trust funds; and
- \$150 million for the State Self-Help Housing Fund

The City could pursue additional funding to support the production of TOD and affordable housing projects. Preparation of the Housing Impact Fee and Inclusionary ordinance would not directly benefit, but the potential availability of additional funding sources for affordable housing may be a consideration in the City's decision making process.

AB 571 (E. Garcia) makes changes to the farmworker housing tax credit set-aside within the Low Income Housing Tax Credit (LIHTC) Program and to the Department of Housing And Community Development's (HCD) Office of Migrant Services (OMS). These changes would make it easier to develop farmworker housing by easing qualifications for the tax credit program.

SB 35 (Wiener) streamlines the approval process for infill developments in local communities that have failed to meet their regional housing needs.

SB35 changes the State procedures for annual review of the City's Housing Element. Any jurisdiction that does not meet its RHNA allotments by income category (which would include Santa Clara) must approve qualifying multi-family housing development projects (including conformance with prevailing wage) through a ministerial permit process with specified review periods of 60 or 90 days depending upon the project size. Qualifying projects are exempted from local parking standards. Absent a conforming zoning district, projects may proceed if they conform to the General Plan.

This bill is complex, but it is reasonable to anticipate that some project developers will make use of its provisions in Santa Clara. The City should amend its Zoning Code, General Plan and/or Zoning Diagram to incorporate objective standards (not currently in place) to insure such projects meet minimum design standards. This will impact the Planning Division work program. Fortunately the City is about to embark on a comprehensive zoning code update.

SB 167 (Skinner) increases the standard of proof required for a local government to justify a denial of low- and moderate-income housing development projects. (SB 167 is identical to AB 678.)

Under SB167 a local jurisdiction could be subject to fines (\$10,000) and/or legal judgment if it fails to approve, or unduly conditions the approval of qualifying affordable residential development projects. Enhanced fines of up to \$50,000 are possible if the City acted in bad faith. The bill is complex and includes numerous provisions to determine if a project qualifies for the offered protection. The bill may encourage more developers to propose affordable projects and could limit the City's ability to deny or condition such projects.

SB 540 (Roth) streamlines the housing approval process by having cities identify Workforce Housing Opportunity Zones, which would focus on workforce and affordable housing in areas close to jobs and transit and conform to California's greenhouse gas reduction laws.

This bill would authorize a local government, as defined, to establish a Workforce Housing Opportunity Zone by preparing an EIR pursuant to CEQA and adopting a specific plan. Zone preparation costs may be reimbursed through a fee. Adoption of the Zone provides the ability to apply for grants. The jurisdiction must then approve development that is consistent with the Zone for up to 5 years.

AB 1515 (Daly) requires housing projects to be deemed consistent, compliant, and in conformity with an applicable plan, if there is substantial evidence that would allow a

reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

The City would need to make specified findings in order to deny an affordable housing or emergency shelter project. If the City denies such a project, affected/interested parties may file with the court and a judge could direct the City to approve the project if the City's findings are determined to be inadequate. The bill may encourage more developers to propose affordable projects and could limit the City's ability to deny or condition such projects.

AB 72 (Santiago) provides the Department of Housing and Community Development broad new authority to review any action by a city or county that it determines is inconsistent with an adopted housing element.

This will require Santa Clara to dedicate additional planning staff/consultant resources for its next Housing Element update in 2022-2023 to respond to increased State oversight of the Housing Element approval process.

AB 73 (Chiu) allows a city or county to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the district's ordinance. This measure is similar to SB 540 (Roth)

This bill allows for ministerial approval of residential projects within a housing sustainability district that the City has established by ordinance. Similar to the Specific Plan process, the City can include design review standards and fees to offset the City's initial costs to establish the district. This is intended to provide the local jurisdiction with a tool to expedite the approval process for conforming projects by avoiding the need for subsequent CEQA review once the district is adopted, although adoption of the district would require CEQA review. The City could take advantage of this provision in the future, but it is not currently envisioned within the General Plan and it is unclear what advantage it would provide in comparison to a Specific Plan and program EIR.

SB 166 (Skinner) mandates that cities maintain an ongoing supply of housing construction sites for residents of various income levels.

SB166 requires local cities to evaluate consistency with the Housing Element prior to any General Plan or Zoning change that could reduce housing production including approval of projects at less than the maximum allowed density. If the action would bring the city out of compliance with its Housing Element, it must make land use changes within 180 days to return to compliance. Cities may require an applicant to increase

project density in order to comply with the Housing Element. This bill will require Planning staff to perform additional analysis as part of the land use entitlement process and may affect the outcome of that process or mandate staff to quickly bring forward changes to the General Plan and/or zoning to insure Housing Element compliance. The need for rezonings could have a significant impact upon Department workload.

AB 879 (Grayson) *modifies existing annual Housing Element filing requirements to include the number of housing development applications received in the prior year, units included in all development applications in the prior year, units approved and disapproved in the prior year, and a listing of sites rezoned to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on specified sites.*

This bill will require Planning staff to perform additional analysis as part of the land use entitlement process and may affect the outcome of that process or mandate staff to quickly bring forward changes to the General Plan and/or zoning to insure Housing Element compliance. The need for rezonings could have a significant impact upon Department workload. The City may also be constrained in its ability to charge impact or mitigation fees.

AB 1397 (Low) *makes changes to the definition of land suitable for residential development to increase the number of sites where new multifamily housing can be built.*

AB1397 adds significant requirements to the preparation of a Housing Element, including additional technical analyses, community outreach and rezoning of properties to satisfy the jurisdiction's RHNA allocations for various income levels. This will require Santa Clara to dedicate additional planning staff/consultant resources for its next Housing Element update in 2022-2023. Additional work would also be required in cases where SB166 prompts the need for a Housing Element update.

AB 1521 (Bloom) *strengthens the Preservation Notice Law regarding the preservation of assisted housing developments by requiring an owner of an assisted housing development to accept a bona fide offer to purchase from a qualified purchaser (First Right of Refusal: Affordable Housing Sales).*

This bill would require the owner of affordable multi-family housing development within Santa Clara who is proposing to sell the development to give priority to a buyer who would maintain it as an affordable development. Given the lack of such conversions in recent history in Santa Clara, it is unclear that this project would have much impact upon City activity. The Housing Division will monitor any potential transactions that would be subject to this requirement.